# Palmamide Sdn Bhd & Anor v Rajendiran a/l Manickam & Anor

HIGH COURT (SHAH ALAM) — CIVIL SUIT NO BA-12BC-02–08 OF 2017
SM KOMATHY J
2 APRIL 2019

*Civil Procedure — Striking out — Appeal against dismissal of striking out application — Employment injuries — Compensation from SOCSO — Whether a party after receiving compensation from SOCSO take action against the employer — Employees' Social Security Act 1969 s 31*

This was an appeal against the decision of the learned sessions judge who dismissed the appellant's application to strike out the claim of the respondents. The respondents were employees of the appellants respectively who had suffered severe injuries from a fire and explosion which occurred at the appellants' factory. After the accident the respondents applied and received compensation from the Social Security Organisation of Malaysia ('SOCSO'). In December 2016 the respondents instituted this action against the appellants claiming for general and special damages and exemplary damages for the injuries sustained by them. The application to strike out was filed by the appellants on the grounds that it disclosed no reasonable cause of action, was scandalous, frivolous and an abuse of the court's process as it was statutorily barred by s 31 of the Employees' Social Security Act 1969 ('the Act') as the respondents had received compensation for their injuries, they were not entitled to receive or recover from their employer any compensation or damages under any other law in respect of this employment injuries sustained as employees. The question to be determined was whether s 31 of the Act debarred the plaintiffs from maintaining the action.

**Held,** allowing the appeal with costs of RM3,000:

(1) The principle that it was not possible to approbate and reprobate was applicable to the present situation. The plaintiffs elected to treat their injuries as employment injuries under the Act and sought and received compensation from SOCSO. Having taken benefit under the Act, they could not contend that their injuries were not employment injuries (see para 12).

(2) Section 31 of the Act expressly bars an insured person from recovering any further compensation or damages under any other law from the employer for his employment injury if he has already received compensation under the Act (see para 13).

**[Bahasa Malaysia summary**

Ini merupakan rayuan terhadap keputusan hakim mahkamah sesyen yang mengetepikan permohonan perayu untuk membatalkan tuntutan responden. Responden merupakan pekerja perayau yang telah mengalami kecederaan serius daripada satu kebakaran dan letupan yang berlaku di kilang perayu. Selepas kemalangan tersebut, responden telah memohon dan menerima pampasan daripada Pertubuhan Keselamatan Sosial ('PERKESO'). Pada Disember 2016 responden telah memulakan tindakan ini terhadap perayu menuntut untuk ganti rugi umum dan khas dan teladan untuk kecederaan yang dialami oleh mereka. Permohonan untuk membatalkan ini difailkan oleh defendan atas alasan bahawa ianya tidak mengemukakan apa-apa kausa tindakan munasabah, melampau, remeh dan merupakan satu penyalahgunaan proses mahkamah kerana ianya telah dilarang oleh statut melalui s 31 Akta Keselamatan Sosial Pekerja 1969 ('Akta tersebut') memandangkan responden telah menerima pampasan untuk kececderaan mereka, mereka tidak layan untuk menerima atau menuntut daripada majikan mereka apa-apa pampasan atau ganti rugi di bawah apa-apa undang-undang lain berkaitan dengan kecederaan sewaktu menjalankan kerja yang dialami oleh pekerja. Persoalan untuk ditentukan adalah sama ada s 31 Akta tersebut menghalang plaintif dari meneruskan tindakan.

**Diputuskan,** membenarkan rayuan dengan kos sebanyak RM3,000:

(1) Prinsip bahawa adalah dilarang untuk aprobat dan reprobat terpakai kepada situasi ini. Plaintif telah memilih untuk menuntut kecederaan mereka sebagai kecederaan dalam pekerjaan di bawah Akta tersebut dan telah meminta dan menerima pampasan daripada PERKESO, setelah mendapat manfaat di bawah Akta tersebut, mereka tidak boleh mengatakan bahawa kecederaan mereka bukanlah kecederaan dalam pekerjaan (lihat perenggan 12).

(2) Seksyen 31 Akta secara nyata melarang seorang pengambil insurans daripada menerima pampasan atau ganti rugi lanjut di bawah apa-apa undang-undang lain daripada majikannya untuk kecederaan dalam pekerjaanya sekiranya dia telah menerima pampasan di bawah Akta tersebut (lihat perenggan 13).]

**Notes**

For a case on appeal against dismissal of striking out application, see 2(5) *Mallal's Digest* (5th Ed, 2017 Reissue) para 9277.

**Cases referred to**

*Che Noh bin Yacob v Seng Hin Rubber (M) Sdn Bhd* [1982] 1 MLJ 80, FC (refd)
*Tan Peng Loh v Lee Aik Fong & Anor* [1982] 1 MLJ 74, FC (refd)

**Legislation referred to**

Employees' Social Security Act 1969 ss 2(6), (11), 31

*Alvin Julian (Wong Hui Ling with him) (Zaib Ibrahim & Co) for the appellants.*
*Manoharan a/l Tevadasin (Mathan Raj a/l SC Subramanian with him) (Ong & Partners) for the respondents.*

**SM Komathy J:**

**[1]** This is an appeal against the decision of the learned sessions judge at Selayang who dismissed the appellants' (the first and second defendants in the court below) application to strike out the claim of the respondents' (the first and second plaintiffs in the court below). For convenience I shall hereinafter refer to the parties as they were in the court below.

BACKGROUND FACTS TO APPEAL

**[2]** The facts are fairly straight forward. The first and second plaintiffs were employees of the first and second defendants, respectively. On 16 October 2015, the plaintiffs suffered severe injuries from a fire and explosion which occurred at the defendants' factory in Rawang whilst welding works were being carried out by the latter's contractor.

**[3]** After the accident, the plaintiffs applied and received compensation from the Social Security Organisation of Malaysia ('SOSCO'). The first plaintiff received RM41,929.32 and the second plaintiff RM37,752.42. In December 2016, the plaintiffs instituted the present action against the defendants' claiming for general and special damages, and exemplary damages for the injuries sustained by them as a result of the incident at the factory.

**[4]** On 19 April 2017, the defendants' applied to strike out the plaintiffs action on the grounds that it disclosed no reasonable cause of action, was scandalous, frivolous and an abuse of the court's process as it was statutorily barred by s 31 of the Act. The defendants submitted that under s 31 of the Act, the plaintiffs' being insured persons who had received compensation for their employment injuries under the Act were not entitled to receive or recover from their employer, any compensation or damages under any other law for the time being in force in respect of this employment injuries sustained as employees. The sessions judge did not accept the submission and dismissed the application. Hence this appeal by the defendants'.

**[5]** The session judge advanced three reasons in her grounds of decision for dismissing the application:

(a) the plaintiffs' claim can only been resolved by calling all witnesses involved in a full trial;

(b) the plaintiffs' have been badly injured with permanent disabilities and therefore have a right in law to receive damages and compensation; and

(c) the plaintiffs' only received compensation from SOCSO for medical leave and not for their injuries, pain and suffering.

STATUTORY PROVISIONS

**[6]** The statutory provisions in the Act that are material to this appeal are set out below:

(a) s 31:

> An insured person or his dependants shall not be entitled to receive or recover from the employer of the insured person, or from any other person who is the servant of the employer, any compensation or damages under any other law for the time being in force in respect of an employment injury sustained as an employee under this Act:
>
> Provided that the prohibition in this section shall not apply to any claim arising from motor vehicle accidents where the employer or the servant of the employer is required to be insured against Third Party Risks under Part IV of the Road Transport Act 1987.

(b) s 2(11):

> 'insured person' means a person who is or was an employee in respect of whom contributions are, were or could be payable under this Act, notwithstanding that such industry or employee was not so registered, so long as the industry was one to which this Act applies;

(c) s 2(6)

> employment injury' means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment in an industry to which this Act applies.

ISSUE RAISED ON APPEAL

[7] The main thrust of the defendants submission was that the grounds of decision of the session judge demonstrated that she had failed to address the question of whether s 31 of the Act debarred the plaintiffs from maintaining the action. It was contended that the decisions of the Federal Court in *Tan Peng Loh v Lee Aik Fong & Anor* [1982] 1 MLJ 74 and *Che Noh bin Yacob v Seng Hin Rubber (M) Sdn Bhd* [1982] 1 MLJ 80 on the scope of s 31 demonstrated that the plaintiffs' claim was plainly and obviously unsustainable by virtue of s 31 of the Act.

**[8]** In support of the proposition, the defendants relied on the following passage from the judgment of the Federal Court in *Tan Peng Loh v Lee Aik Fong & Anor*:

> In my view s 31 clearly prohibits the plaintiff or his dependants from receiving or recovering from his employer damages under any other law in respect of an employment injury sustained as an employee under the Act. The Act has very clearly extinguished the right of an employee to a common law remedy. The pertinent question to consider is whether the words 'any other law' cover the common law. My view is that they do.
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> The word 'law' has the meaning assigned by art 160(2) of the Federal Constitution. (Interpretation Act 1967). Article 160(2) of the Federal Constitution defines 'law to include written law, the common law in so far as it is in operation in the Federation or any part thereof and any custom or usage having the force of law in the Federation or any part thereof.

**[9]** Reliance was also placed on the following passage in *Che Noh bin Yacob v Seng Hin Rubber (M) Sdn Bhd*:

> In our judgment the words of ss 31 and 42 of the Act are too clear to cause any ambiguity. Most judges would agree with the dictum of Scott LJ in *Croxford v Universal Insurance Co Ltd* [1936] 2 KB 253, 280:
>
> > Where the words of an Act of Parliament are clear, there is no room for applying any of the principles of interpretation which are merely presumptions in cases of ambiguity.
>
> Therefore it is clear that once a person is an insured person under the Act, ss 31 and 42 of the Act constitute a complete bar to any claims against his employer under the common law.

**[10]** The plaintiffs' countered the defendants argument by submitting that that the defendants would be correct in their submission only if the injuries sustained by them came within the definition of 'employment injury' under the Act. It was argued that the plaintiffs' injuries did not come within the definition of employment injuries as they did not sustain these injuries while carrying out their duties at the factory, but had sustained them as a result of the defendants' failure to safeguard their safety when the welding works were being carried out in the factory by their authorised contractor.

**[11]** In the present instance, it is common ground that the plaintiffs applied for and received compensation from SOCSO. Under the Act an insured person can claim for compensation from SOCSO only for an employment injury sustained by him as an employee. This can only mean that the plaintiffs would not have qualified for compensation under SOSCO if their injuries were not employment injuries. Having received the compensation, it is not open to the plaintiffs to contend now that the injuries sustained by them are not employment injuries.

**[12]** There is a principle of law of that it is not possible to approbate and reprobate. That means you are not allowed to blow hot and cold in the attitude that you adopt. A man cannot adopt two inconsistent attitudes towards another: he must elect between them and, having elected to adopt one stance, cannot thereafter be permitted to go back and adopt and inconsistent stance. In my judgment this principle is applicable to the present situation. The plaintiffs elected to treat their injuries as employment injuries under the Act and sought and received compensation from SOCSO. Having taken benefit under the Act, they cannot now contend that their injuries are not employment injuries.

**[13]** Section 31 of the Act expressly bars an insured person from recovering any further compensation or damages under any other law from the employer for his employment injury if he has already received compensation under the Act. The principle underlying this statutory bar is akin to the basic rule against double recovery. The plaintiff cannot be allowed to make a double claim for their employment injuries for which they have been compensated by SOCSO.

CONCLUSION

**[14]** In the result, I set aside the decision of the sessions judge and allow the appeal with costs of RM3,000 for the defendants.

*Appeal allowed with costs of RM3,000.*

Reported by Izzat Fauzan